

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATTHEW KOSTRZEWSKI, as
Personal Representative of THE
ESTATE OF JONATHAN
KOSTRZEWSKI,

Case No. 1:20-CV-00682-PLM
HON. PAUL L. MALONEY

Plaintiff,

v.

CITY OF WYOMING, Michigan,
OFFICER BRANDON KNOWLING,
Individually and in his Official
Capacity, OFFICER JACOB BYLSMA,
Individually and in his Official
Capacity, OFFICER ERICH STAMAN,
Individually and in his Official
Capacity, OFFICER AARON
BROOKS, Individually and in his
Official Capacity, OFFICER JAKE
TERPSTRA, Individually and in his
Official Capacity, OFFICER DEVIN
QUINTARD, Individually and in his
Official Capacity.

Defendants.

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DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS
PURSUANT TO FED. R. CIV. P. 12(C)

ORAL ARGUMENT REQUESTED

NOW COME Defendants, CITY OF WYOMING, OFFICER BRANDON KNOWLING, OFFICER JACOB BYLSMA, OFFICER ERICH STAMAN, OFFICER AARON BROOKS, OFFICER JAKE TERPSTRA and OFFICER DEVIN QUINTARD, by and through their attorneys, CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C., by ALLAN C. VANDER LAAN and KRISTEN REWA, and for their motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12 (C), state:

1. Plaintiff's complaint fails to state a plausible due process claim under the state-created danger theory of liability. See ***Cutlip v City of Toledo***, 488 Fed.Appx 107 (6th Cir. 2012).
2. Plaintiff's complaint fails to state a claim against each Defendant Officer individually. See ***Robertson v. Lucas***, 753 F.3d 606, 615 (6th Cir. 2014)(a plaintiff "must demonstrate that each individual government-official defendant, through the official's own actions, has violated the Constitution.").
3. Defendant Officers are entitled to qualified immunity. The complaint does not allege facts that would show that Defendant Officers violated clearly established law at the time of the alleged conduct. See ***Cutlip v City of Toledo***, 488 Fed.Appx at 115 (noting the Sixth Circuit has never found liability under the state-created-danger doctrine for suicide).
4. Defendant City of Wyoming is entitled to judgment on the pleadings because Plaintiff cannot show a constitutional violation by any city employee. Moreover, the allegations against Defendant City are conclusory and fail to plead a plausible municipal liability claim. ***Siefert v. Hamilton Cty.***, 951 F.3d 753, 767 (6th Cir. 2020); ***Bright v. Gallia Cty., Ohio***, 753 F.3d 639, 660 (6th Cir. 2014).

5. Defendant City of Wyoming is entitled to governmental immunity from the state law gross negligence claim. Mich. Comp. Laws § 691.1407(1).
6. Defendant Officers are entitled to governmental immunity from the state law gross negligence claim. The Defendant Officers were not “*the proximate cause*,” of decedent’s death meaning “the one most immediate, efficient, and direct cause preceding the injury.” Mich. Comp. Laws § 691.1407(2).
Robinson v. City of Detroit, 462 Mich. 439, 459, 613 N.W.2d 307, 317 (2000).
7. On October 29, 2020, Defendants’ counsel sought concurrence from Plaintiff’s counsel in the relief sought by the present motion. Concurrence has not been obtained.

WHEREFORE, Defendants, **CITY OF WYOMING, OFFICER BRANDON KNOWLING, OFFICER JACOB BYLSMA, OFFICER ERICH STAMAN, OFFICER AARON BROOKS, OFFICER JAKE TERPSTRA and OFFICER DEVIN QUINTARD**, ask this Court to enter judgment in favor of Defendants for the reasons stated more fully in the accompanying brief.

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

/s/ Kristen Rewa
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Dated: November 13, 2020